

NO. 3716

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United States  
Circuit Court of Appeals  
For the Ninth District

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CLARA J. CURTIS,

Plaintiff in Error,

vs.

THE NORTH AMERICAN INDIAN, INC., a  
Corporation, E. S. PEGRAM and GUSTON  
BORGLUM,

Defendants in Error.

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Supplemental Transcript of Record

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UPON WRIT OF ERROR TO THE UNITED  
STATES DISTRICT COURT OF THE WEST-  
ERN DISTRICT OF WASHINGTON,  
NORTHERN DIVISION.

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Filed



United States  
Circuit Court of Appeals  
For the Ninth District

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CLARA J. CURTIS,

Plaintiff in Error,

vs.

THE NORTH AMERICAN INDIAN, INC., a  
Corporation, E. S. PEGRAM and GUSTON  
BORGLUM,

Defendants in Error.

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Supplemental Transcript of Record

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UPON WRIT OF ERROR TO THE UNITED STATES  
DISTRICT COURT OF THE WESTERN  
DISTRICT OF WASHINGTON,  
NORTHERN DIVISION

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No. 5225.

THE NORTH AMERICAN INDIAN, INC., a  
es corporation,

Plaintiff.

E. S. PEGRAM and GUTSON BORGLUM,

vs.

Additional Plaintiffs,

EDWARD S. CURTIS and CLARA J. CURTIS,  
formerly husband and wife, and CURTIS  
STUDIO,

Defendants.

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PRAECIPE FOR SUPPLEMENTAL TRANS-  
SCRIPT OF RECORD.

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To The Honorable F. M. Harshberger, Clerk of the  
United States District Court for the Western  
District of Washington, Northern Division:

Please prepare and return supplemental transcript  
of the following <sup>papers and</sup> records in Cause No. 5225, with the  
Writ of Error in the above entitled cause:

1. Order extending time for filing supplemental  
transcript.

2. Third Party Claim of Sue Phillips Gates and  
Marshal's supplemental return on third party claim  
of Sue Phillips Gates.

3. Motion of Defendant, Clara J. Curtis, for cost  
bond.

4. Cost bond of non-resident with the United States Fidelity & Guaranty Company as surety.

WRIGHT and WRIGHT and  
POE and FALKNOR,

Attorneys for Plaintiffs.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division. Sept. 6, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

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United States District Court, Western District of  
Washington, Northern Division.

No. 5225.

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THE NORTH AMERICAN INDIAN, INC., a  
corporation,

Plaintiff.

E. S. PEGRAM and GUTSON BORGLUM,  
Additional Plaintiffs,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
formerly husband and wife, and CURTIS  
STUDIO,

Defendants.

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ORDER EXTENDING TIME FOR FILING  
SUPPLEMENTAL TRANSCRIPT.

The plaintiffs, who are defendants in error on appeal in the above entitled cause, having applied to this court for an order extending time for having prepared supplemental transcript herein necessary to the proper consideration of the appeal in this cause, and good cause appearing therefor, it is hereby

**ORDERED** that the time may be extended for the preparation of said supplemental transcript of record on appeal, and the printing, filing and serving of the same, until up to and including September 14, 1921.

Done in open court this 6th day of September, 1921.

**JEREMIAH NETERER**, Judge.

Endorsed: Filed in the United States District Court Western District of Washington, Northern Division, Sept. 6, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

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**STATE OF WASHINGTON,**

County of King

ss.        No. 5225

To John M. Boyle, United States Marshal for the Western District of Washington:

I, Sue Phillips Gates, being first duly sworn, on oath depose and say: That I am not a defendant in that certain action numbered 5225 now pending in the United States District Court, for the Western Dis-

trict of Washington, Northern Division, nor the agent of any of the defendents therein. That I am the owner of the folowing described property which, acording to your return on file in said action, you have wrongfully taken possession of under a void writ of replevin issued in said action, and hold in posession in No. 64 Cobb Building, in the city of Seattle, King County, State of Washington, towit:

One large cabinet full of reviews of North American Indian; one box containing records, maps, and field material; one box containing Indian Costume Material; one box containing Indian maps and files; one large assortment of Indian negatives, transparencies, records and manuscripts; assortment of negatives and positive plates  $6\frac{1}{2} \times 8\frac{1}{2}$  size; Indian subjects numbering from 1 to 38000, as listed in four record books of corresponding numbers; 729 negatives and positive plates  $14 \times 17$ ; fifty-one negatives and positive plates  $18 \times 22$ ; nineteen negatives and positive plates  $16 \times 20$ ; one box containing Indian clippings, with manuscript descriptive thereof; one large assortment of portfolios and books of North American Indian; 16 large bound portfolios; 19 volumes of North American Indian,  $\frac{3}{4}$  Morocco, 6 volumes of North American Indian in cloth; one package of folio prints; one small package of prints; assorted portfolio, prints unbound; one volume of Indian Days Long Ago, in cloth; four book cases and contents; one large assortment of Indian Baskets, Pottery and Indian Curios;



That my title to the whole of said property was derived directly from one Clara J. Curtis, who prior to the 24th day of June, 1919, owned an interest therein as composing one of the community of which the other member was Edward S. Curtis, and who on said day was by the decree of the Superior Court of the State of Washington, for King County, divorced from said Edward S. Curtis, and in said decree the title to the whole of said above described property was vested in Clara J. Curtis, as her sole and separate property, free and clear of any claim of title therein, or of any part thereof, of said Edward S. Curtis, That on the tenth day of April, 1920, the said Clara J. Curtis, for a valuable consideration unto her passing from me, sold and conveyed and warranted the title of and to the whole of said above described property to me, ever which said time I have been and now am, the sole and exclusive owner of said above described property, and of the whole thereof, and hereby make claim therefore, and for the whole thereof, and as such owner I hereby demand that you immediately release said above described property, and the whole thereof, and deliver the same, and the whole thereof, to me, and into my possession.

SUE PHILLIPS GATES,

Subscribed and sworn to before me this twenty-second day of April, A. D. 1920.

John G. Barnes,

(Notary Seal)

Notary Public in and for the State of Washington, residing at Seattle.

MARSHAL'S SUPPLEMENTAL RETURN  
ON THIRD PARTY CLAIM OF SUE  
PHILLIPS GATES.

BE IT REMEMBERED, That the hereunto attached third party claim of Sue Phillips Gates was served on me as United States Marshal on the 22nd day of April, 1920. That I thereupon notified the plaintiff thereof, and demanded it indemnify me against such claim, whereupon the hereunto attached bond of the plaintiff was delivered to me on the 23rd day of April, 1920, and that thereupon I held the said property in pursuance to the writ of replevin in the cause.

Dated at Seattle, Washington, in said District on this 12th day of May, 1920.

JOHN M. BOYLE,

U. S. Marshal,

By W. E. Theodore, Deputy

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, May 15, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

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United States District Court, Western District of  
Washington, Northern Division.

No. 5225.

DEMAND OF CLARA J. CURTIS FOR  
SECURITY FOR COSTS.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
formerly husband and wife, and CURTIS  
STUDIO,

Defendants.

Comes now the defendant above named, Clara J. Curtis, by John G. Barnes, her attorney, and demands and requires security for the costs and the charges which may be awarded against plaintiff in this action, it appearing from the face of the complaint herein that the plaintiff is a corporation having its principal place of business without the district of this court, and without the State of Washington.

It is further required that all proceedings whatsoever in this action, or suit, may be stayed until such security be given.

This demand is based upon the complaint in this action.

JOHN G. BARNES,  
Attorney for defendant Clara J. Curtis,  
Room 1017 White Building, Seattle, King  
County, State of Washington.

Service of within demand and receipt of copy admitted this 10th day of May, 1920.

WRIGHT & WRIGHT,  
Attorneys for Plaintiff.

We hereby designate Room No. 1017 White Building, 4th Ave. at Union Street, Seattle, Washington, as the place where all subsequent papers, herein, except writs and process may be made upon the attorney herein, and consent that service of all subsequent papers herein, except writs and process, may be made as the place hereinabove designated upon the said John G. Barnes. Dated May 10th, 1920.

JOHN G. BARNES,  
CLARA J. CURTIS.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, May 17, 1920. F. M. Harshberger, Clerk. S. E. Leitch, Deputy.

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United States District Court, Western District of  
Washington, Northern Division.

No. 5225  
BOND FOR COSTS.

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THE NORTH AMERICAN INDIAN, INC., a  
corporation,

Plaintiff.

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
formerly husband and wife, and CURTIS  
STUDIO,

Defendants.

KNOW ALL MEN BY THESE PRESENTS, that UNITED STATES FIDELITY & GUARANTY COMPANY, a corporation, organized and existing under and by virtue of the laws of the State of Maryland, and authorized to do business in the State of Washington, as surety, and NORTH AMERICAN INDIAN, INC., a corporation, plaintiff in the above entitled action, as principal, are held and firmly bound unto the defendant Clara J. Curtis one of the defendants above named, in the just and full sum of three-hundred (\$300.00) Dollars, for the payment of which sum, well and truly to be made, both the principal and surety binds itself, and its successors or assigns, jointly and severally, firmly by these presents.

Sealed and dated this 17th day of May, A. D. 1920.

The conditions of this Obligation are such, that whereas, the plaintiff in the above entitled action, being a non-resident of the Western District of Washington, Northern Division, and without the State of Washington, and the defendant Clara J. Curtis, one of the defendants in the above entitled action, has required security for costs, and charges in this suit, as more fully appears from her written demand therefore, and attached to an alleged insufficient bond for costs and herein on file, and which may be awarded against said plaintiff,

And whereas, John G. Barnes, attorney for the said

Clara J. Curtis, contends that the said bond heretofore filed, is insufficient in amount and in form,

And Whereas counsel for plaintiff having agreed to file a bond for costs to meet the objection of the said John G. Barnes,

NOW THEREFORE, if the said plaintiff in the above entitled action shall pay, or cause to be paid, such costs and charges as may be awarded against it by judgment, or in the progress of this action, not exceeding the sum of \$300.00, then this obligation shall be void; otherwise to remain in full force, effect and virtue.

AND IT IS FURTHER STIPULATED that the surety herein agrees that in case of a breach of any condition of this obligation, the above entitled Court may upon notice to it of not less than ten days, proceed summarily in this action to ascertain the amount which the said surety is bound to pay on account of such breach, and render judgment therefore against it, and award execution therefore.

NORTH AMERICAN INDIAN, INC.,

Principal,

By WRIGHT & WRIGHT,

Attorneys of Record.

By ELIAS A. WRIGHT,

UNITED STATES FIDELITY &

GUARANTY CO., Surety.

By John C. McCollister, Atty.-in-Fact.

(Seal

U. S. F. & G. Co.)

APPROVED: Edward E. Cushman, Judge.

Endorsed: Filed in the United States District Court,  
Western District of Washington, Northern Division,  
May 17, 1920. F. M. Harshberger, Clerk. S. E.  
Leitch, Deputy.

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IN THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE NINTH CIRCUIT.

No. 3716

CLARA J. CURTIS,

Plaintiff in Error,

vs.

THE NORTH AMERICAN INDIAN, INC., a  
corporation, E. S. PEGRAM and GUTSON  
BORGLUM,

Defendants in Error.

DESIGNATION BY DEFENDANTS IN  
ERROR OF EXHIBITS TO BE  
PRINTED.

Comes now the defendants in error in the above en-  
titled action by Wright & Wright and Poe & Falknor,  
their attorneys, and make the following designation of  
exhibits to be printed:

1.

Plaintiff's Exhibit "1."

WRIGHT and WRIGHT and  
POE and FALKNOR,  
Attorneys for Defendants in Error.



Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Sept. 6, 1921. F. M. Harshberger, Clerk. S. E. Leitch, Deputy.

3225

3328      Pltfs. Ex. No. 1.

THIS AGREEMENT, made this 21st day of December, 1909, by and between EDWARD S. CURTIS of Seattle, Washington, (hereinafter called the vendor), and THE NORTH AMERICAN INDIAN, a corporation organized and existing under the laws of the State of New York, (hereinafter called the "Corporation"),

WHEREAS, For many years heretofore the Vendor has been and now is engaged in the publication of an important work known as "The North American Indian" and has created and incurred assets and liabilities substantially as set forth in the balance sheet marked "Schedule A" hereunto annexed, the net assets and the fair value thereof having been appraised by the standard Audit Company of the City of New York as set forth in the Statement marked "Schedule B" hereunto annexed; and

WHEREAS, The said schedule A includes a subscription in the name of J. Pierpont Morgan for 25 sets of the work for the price of \$75,000, of which \$60,000 has been paid to the Vendor, but said payment by said J. Pierpont Morgan was in fact made upon the agreements of the Vendor set forth in a writing



signed by the Vendor under date of March 30, 1906 (of which said writing a copy is hereto annexed marked Schedule C), which said agreements on the part of the Vendor also are liabilities of the said business; and

WHEREAS, The Vendor desires to incorporate the said business and the Corporation desires to acquire and henceforth to conduct the same, provided that, and not otherwise, the Vendor will agree to devote and to render his best skill and services exclusively in the prosecution of the business and to the preparation and publication of the said work and to protect his said undertaking by procuring and assigning to the Corporation an insurance upon his life in the amount of at least sixty thousand dollars (\$60,000.00); and

WHEREAS, In the opinion and judgment of the board of directors of the Corporation it has been and is hereby determined that the fair value of the said business to the Corporation for its said purposes is equal to at least the sum of \$50,000.

NOW, THEREFORE, In consideration of the premises and of the sum of one dollar (\$1.00) by each of the said parties to the other in hand paid, and in consideration of the mutual promises herein contained, it is hereby covenanted and agreed between the parties as follows, to wit:

#### FIRST:

- (1) The Vendor hereby sells, transfers, assigns

and sets over unto the Corporation the said business heretofore conducted by him in the publication of the said The North American Indian, and all the property and assets of every name and nature by him employed in connection therewith, including all copyrights, subscriptions, subscription rights, publications and material for publication, plates, prints and printed books, illustrations and material of every name, including choses in action and rights of action; but subject to all the liabilities in respect of such business, which the Vendor covenants are fully and truly set forth in the Schedules A, B and C hereunto annexed and forming part of this agreement.

(2) The Vendor for and during the period necessary for the complete preparation and publication of the said work will render and devote to the Corporation exclusively his best skill and services at the annual salary of five thousand dollars (\$5,000) payable in equal monthly installments; the Corporation to have the right to terminate such employment upon not less than three months' notice, expiring with the 31st day of December in any year.

In protection of this stipulation the Vendor will cause his life to be insured for the benefit of the Corporation in some company satisfactory to the Corporation in the sum of not less than sixty thousand dollars (\$60,000), and will cause such policy to be executed or assigned in such form as shall secure to the Corpor-

ation the benefit thereof. The premiums upon such policy shall be paid and shall be payable as part of the expenses of the business of the Corporation.

(3) The Vendor will pay or cause to be paid into the treasury of the Corporation for its corporate purposes and for the discharge of its liabilities, the sum of fifty-nine thousand dollars (\$59,000) in money in consideration of the issue therefor at par of five hundred and ninety (590) shares of the preferred stock of the Corporation.

It being expressly stipulated that none of the unissued shares of the preferred stock shall be issued except with the consent of the holders of a majority of the preferred stock outstanding at the time of such consent, nor shall the preferred or common stock be increased without like consent of the holders of a majority of such preferred stock.

(4) From time to time the Vendor will make, execute and deliver, or cause to be made, executed and delivered, to the Corporation, good and sufficient assignments of any and all copyrights owned or employed by him in connection with his said business and property hereby sold and assigned, or hereafter obtained by him, and also any and all other assignments, bills of sale or instruments of further assurance as shall be necessary or proper more completely to vest in the Corporation the title to said business and property of the Vendor, including copyrights and

trade-marks or names, or as shall be requested by the Corporation for such purpose.

## SECOND:

The Corporation hereby accepts the transfer and assignment of the said business of the Vendor at the price and valuation of fifty thousand dollars (\$50,000) and accepts the subscription of the Vendor for five hundred and ninety shares of the preferred stock of the Corporation at par. In consideration of <sup>transfer and such</sup> such payment the Corporation will forthwith issue or cause to be issued to the said vendor or his nominee, five hundred shares of the common stock of the Corporation of the aggregate par value of fifty thousand dollars (\$50,000), and five hundred and ninety shares of the preferred stock of the Corporation of the aggregate par value of fifty-nine thousand dollars (\$59,000), the proceeds of such preferred stock to be applied in payment of existing liabilities; and all the stock so issued to be fully-paid and non-assessable.

IN WITNESS WHEREOF, The party of the first part has affixed his hand and seal and the party of the second part has caused its corporate seal to be affixed hereto, and these presents to be signed in its name by its officers duly authorized, the day and year first above written.

EDWARD S. CURTIS (Seal).

THE NORTH AMERICAN INDIAN,  
(Corporate) By Robert C. Morris,

(Seal)

Vice President.

(LS)

Attest:

F. Gordon Brown, Secretary.

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(SCHEDULE A.)

PERLEY MORSE, HENRY CLARK DAVIS

Certified Public

Certified Public

Accountant,

Accountant,

President.

Secretary.

STANDARD AUDIT COMPANY,

41-43 Wall Street

43-49 Exchange Place

New York

Telephone 7677-7678 Hanover

Cable Address "Standit"

December 7, 1909.

Mr. Edward S. Curtis,

437 Fifth Avenue,

New York, N. Y.

Dear Sir:

As requested by you, we hand you herewith two Exhibits, as follows:

Exhibit "A"—General Balance Sheet as of October 31, 1909.

Exhibit "B"—Statement of Resources and their Disposition as of October 31, 1909.

The total net resources are, approximately, \$130,-

139.80, as appears in Exhibit "B." This amount is approximate for the reason that it was impossible to segregate exactly the field work done on the volumes already issued from that done on the volumes yet to be issued. Where there was any doubt the work was charged to the books already issued. The actual resources would, therefore, be increased by whatever amount was so charged to the cost of the book already issued in excess of the cost of the actual field work done on them.

Resectfully submitted,

STANDARD AUDIT COMPANY,

Perley Morse,

Certified Public Accountant,

President.

Attest:

Henry Clark Davis,

(Corporate)

Certified Public Accountant,

(Seal)

Secretary.



## 21

ASSETS		LIABILITIES	
Invested Assets:		Current Liabilities:	
Inventory—Estimated:		Accounts Payable	\$7,687.11
Field Work	\$44,775.23	Bills Payable	38,457.46
Paper	1,400.00	Commissions	3,444.30
Plates	17,303.74	Curtis Studio Advances	15,000.00
Presswork	2,703.96		
Unbound books and folios at Hy. Blackwell's	40,145.68	Total Current Liabilities	\$ 64,588.87
Bound books and folios	25,655.22	Deferred Liabilities:	
Total Invested Assets	\$131,983.83	Subscriptions paid in advance	\$74,162.50
Current Assets:		Total Deferred Liabilities	74,162.50
Cash on hand and in bank	\$ 669.48	Advanced by E. S. Curtis	\$45,700.00
Accounts Receivable—		Net Income per Exhibit "B"	5,542.99
Subscriptions	10,462.50		
Henry Blackwell	695.02	Less:	\$51,242.99
Wm. Dinwiddie	3,660.30	E. S. Curtis Drawing A/c	6,384.44
Frank Donohue	15,693.95		
Total Current Assets	31,181.25		
Deferred Assets:			
Discount	\$ 3,881.25		
Commissions	8,541.00		
Suspense Account	8,022.59		
Total Deferred Assets	20,444.84		
	\$183,609.92		\$183,609.92

**EDWARD S. CURTIS**  
**STATEMENT OF RESOURCES AND THEIR**  
**DISPOSITION AS OF OCTOBER 31,**  
**1909**

**RESOURCES:**

Field work on unissued books.....	\$44,775.23	
Paper on hand .....	1,400.00	
Plates on hand .....	17,303.74	
Presswork on hand .....	2,703.96	
Unbound books and folio at Henry Blackwell's	40,145.68	
Bound books and folios on hand .....	25,655.22	\$131,983.83
		<hr/>
Cash in bank .....		669.48
Unpaid subscriptions .....		10,462.50
Due from Wm. Dinwiddie .....		3,660.30
Due from Frank Donohue .....		15,693.95
Commissions paid on subscriptions paid in advance .....		8,541.00
Expenses paid in advance and not classified.....		8,717.61
Total assets .....		<hr/>
Less:		\$179,728.67
Accounts Payable .....	\$ 7,687.11	
Bills Payable .....	38,457.45	49,588.87
Unpaid Commissions .....	3,444.30	
		<hr/>
		\$130,139.80
<hr/>		
<b>TOTAL RESOURCES</b>		
<b>DISPOSITION:</b>		
Advances by E. S. Curtis (Net) .....	\$39,315.56	
Advances by Curtis Studio .....	15,000.00	
Subscriptions paid in advance (Net) .....	70,281.25	
Profit on volumes issued .....	5,542.99	
		<hr/>
<b>TOTAL DISPOSITION</b> .....		\$130,139.80

**Exhibit B****STANDARD AUDIT COMPANY**

Perley Morse  
 Certified Public Accountant  
 President

Henry Clark Davis  
 Certified Public Accountant  
 Secretary

41-43 Wall Street  
 43-49 Exchange Place  
 NEW YORK  
 Telephone 7677-7678 Hanover  
 Cable Address "Standit"

December 28, 1909.

Mr. Edward S. Curtis,  
 437 Fifth Avenue



New York, N. Y.

Dear Sir:—

As instructed by you we submit herewith a "Schedule of the Subscriptions Received, to October 31, 1909, showing the amounts of the original subscriptions; and the status of the accounts at October 31, 1909," as shown in the General Balance Sheet heretofore submitted to you.

The subscription of J. McLean was originally for the entire set of books, but as it was cancelled after the delivery of the first two volumes, we have shown it as a subscription for one tenth of the set.

Whenever a discount was allowed it was for the payment of the full subscription in advance, and was charged by us in the statement (partly estimated) of the Net Worth at October 31, 1909, against the deliveries of the first five volumes. That is, the liability set up for "Subscriptions paid in Advance" is the full subscription price for the last fifteen volumes, except in the case of Mr. Morgan. In that account there is still unpaid under the agreement made in 1906 between Mr. Morgan and Mr. Curtis, three payments of \$5,000.00 each. While the agreement calls for twenty five sets, deliveries have been made on this account of the first five volumes of twenty-six sets, part of which had special bindings for which an extra charge of \$1,062.50 was made and paid.

The column headed "Due from Subscribers for the first five volumes" shows the balances uncollected at October 31, 1909, for the deliveries of those volumes.

Respectfully submitted,  
STANDARD AUDIT COMPANY,  
PERLEY MORSE,

Certified Public Accountant,  
President.

(Corporate)

(Seal)

Attest:

Henry Clark Davis,  
Certified Public Accountant,  
Secretary.

EDWARD S. CURTIS  
SCHEDULE OF SUBSCRIPTIONS RECEIVED TO OCTOBER 31, 1909.  
SHOWING THE AMOUNTS OF THE ORIGINAL SUBSCRIPTIONS AND THE STATUS OF THE ACCOUNTS AT  
OCTOBER 31, 1909.

NAME	Subscription		Deliveries Volumes	Charge for Deliveries	Credit			Balance
	Sets	Amount			Cash	Discount	Due from Subscribers for 1st 5 Volumes	
Alden J. Blethen .....	1	\$ 3,000.00	5	\$ 750.00	\$ 2,250.00	\$ 750.00		\$ 2,250.00
W. K. Bixby .....	1	3,850.00	5	962.50	2,887.50	962.50		2,887.50
Geo. D. Barron .....	1	3,850.00	5	962.50	3,000.00	850.00		2,887.50
Mrs. Wm. Hy. Bliss .....	1	3,200.00	4	640.00	640.00			
Miss Charlotte Bowditch .....	1	3,000.00	5	750.00	750.00			
Chas. M. Bair .....	1	3,850.00	5	962.50	1,000.00			37.50
Samuel S. Boyden .....	1	4,400.00	5	1,100.00	1,200.00			100.00
Wm. H. Bartlett .....	1	3,000.00	5	750.00	2,200.00			1,450.00
Parker Corning .....	1	3,000.00	5	750.00	750.00			
Andrew Carnegie .....	1	3,850.00	5	962.50	1,500.00			537.50
Mrs. J. C. Colgate .....	1	3,000.00	5	750.00	750.00			
Albro E. Chase .....	1	4,400.00	5	1,100.00			1,100.00	
B. P. Cheney .....	1	3,000.00	5	750.00	750.00			
Cleveland H. Dodge .....	1	3,000.00	5	750.00	750.00			
Cleveland H. Dodge .....	1	3,000.00	5	750.00	750.00			
Dr. James Douglas .....	1	3,850.00	5	962.50	3,000.00	850.00		2,887.50
Robert E. Davie .....	1	3,000.00	5	750.00	750.00			
Miss Henrietta Failing .....	1	3,000.00	5	750.00	750.00			
Free Public Library, New Bedford, Mass. ....	1	3,000.00	5	750.00	750.00			
Mrs. Robert Garrett .....	1	3,850.00	5	962.50	962.50			

Samuel Hill .....	1	3,200.00	5	800.00	3,000.00	200.00	2,400.00
Hackley Public Library .....	1	3,000.00	5	750.00	750.00		
S. V. Hoffman .....	1	3,000.00	5	750.00	750.00		
F. W. Hodge, Editor .....	1	3,000.00	5	750.00		750.00	
J. J. Hill .....	1	3,000.00	5	750.00	750.00		
A. F. Hyde .....	1	3,000.00	5	750.00	750.00		
H. E. Huntington .....	1	3,000.00	2	300.00	300.00		
Eldridge R. Johnson .....	1	3,000.00	5	750.00	750.00		
Librarian of Congress, for copyright .....	2	6,000.00	10	1,500.00		1,500.00	
Los Angeles Public Library .....	1	3,000.00	5	750.00	750.00		
Mrs. H. J. Lewis .....	1	3,000.00	5	750.00	350.00		
D. J. Mitchell .....	1	3,850.00	5	962.50	962.50		
C. A. Moore, Jr. ....	1	3,000.00	5	750.00	750.00		
Dr. Lewis R. Morris .....	1	3,000.00	5	750.00	3,000.00		2,250.00
Forward .....	35	\$114,150.00		\$27,927.50	\$ 38,252.50	\$ 3,750.00	\$17,687.50

Forward .....	35	\$114,150.00		\$27,927.50	\$ 33,252.50	\$ 3,750.00	\$17,687.50
Robt. W. Miers .....	1	3,850.00	5	962.50	962.50		
Judge Moore .....	1	3,850.00	5	962.50	3,850.00		2,887.50
Minneapolis Athenaeum .....	1	3,000.00	5	750.00	750.00		
Metropolitan Museum of Art .....	1	3,000.00	2	300.00	300.00		
J. McLean .....	1/10	306.00	2	300.00	300.00		
Mrs. W. N. McMillan .....	1	3,200.00	5	800.00	800.00		
J. P. Morgan .....	26	78,000.00	130	20,562.50	61,062.50		40,500.00
Thos. C. Noyes .....	1	3,850.00	5	962.50	962.50		962.50
E. W. Olney .....	1	3,000.00	5	750.00	750.00		300.00
J. J. Phillips .....	1	3,000.00	5	750.00	3,000.00		2,250.00
Gifford Pinchot .....	1	3,000.00	5	750.00	750.00		
Peabody Institute .....	1	3,000.00	5	750.00	750.00		
W. W. Phillips .....	1	3,200.00	5	800.00	800.00		800.00
Portland Public Library .....	1	3,200.00	5	800.00	800.00		800.00
D. G. Reid .....	1	3,850.00	5	962.50	962.50		
D. Francis Riggs .....	1	3,000.00	5	750.00	750.00		

Mrs. M. E. Ryan .....	1	3,850.00	5	962.50	962.50	800.00	
The Rainier Club .....	1	3,200.00	5		750.00		
Fred S. Stimson .....	1	3,000.00	5		750.00		
Seattle Public Library .....	1	3,000.00	5		962.50		
H. P. Strickland .....	1	3,850.00	5		750.00		
C. S. Sheldon .....	1	3,000.00	5		750.00		
F. M. Smith .....	1	3,000.00	5		750.00	750.00	
F. E. Sanders .....	1	3,000.00	5		750.00		
Mrs. C. D. Stimson .....	1	3,000.00	5		600.00	150.00	
St. Louis Mercantile Library Assn. ....	1	3,000.00	5			750.00	
Lord Strathcona .....	1	3,000.00	5				
Mrs. James A. Tracy .....	1	3,000.00	5		750.00		750.00
Mrs. F. F. Thompson .....	1	3,000.00	5		1,500.00		
J. Elmore Turrell .....	1	3,200.00	5		400.00	400.00	
Jno. R. Van Wormer .....	1	3,000.00	5		500.00	250.00	
Mrs. Fred W. Vanderbilt .....	1	3,000.00	2		3,000.00		2,700.00
Alex. Van Rensselaer .....	1	3,000.00	5		750.00		
Theo. N. Vail .....	1	3,850.00	5		962.50	962.50	2,887.50
John Jay White, Jr. ....	1	3,000.00	5		2,400.00	600.00	2,250.00
C. C. Worthington .....	1	3,000.00	5		750.00		
Mrs. Emma H. Ward .....	1	3,000.00	5		750.00		2,250.00
H. Walters .....	1	3,000.00	5		750.00		
Mrs. Fanny Annet Whitney .....	1	3,000.00	5		750.00		
University of Washington, (E. S. C.) .....	1	3,000.00	5		750.00	750.00	
TOTAL .....	199 1/10	\$313,400.00		\$78,127.50	\$136,652.50	\$5,175.00	\$74,162.50

*Schedule* <sup>28</sup> *B*  
STANDARD AUDIT COMPANY

Perley Morse  
Certified Public Accountant  
President

Henry Clark Davis  
Certified Public Accountant  
Secretary

41-43 Wall Street  
43-49 Exchange Place  
NEW YORK  
Telephone 7677-7678 Hanover  
Cable Address "Standit"

December 10, 1909.

To

The Board of Directors of

"The North American Indian".

Gentlemen:

We have prepared a statement of the Net Worth of "The North American Indian" (partly estimated) at October 31, 1909, and a memorandum as to the status of the subscriptions received up to that date, (see schedule hereto attached).

In our judgment, after eliminating all doubtful assets, the Net Worth at October 31, 1909, was \$54,692.96. In arriving at this amount we did not take into consideration any money value for the ten years time devoted to this work by Mr. Edward S. Curtis.

Of the subscriptions received there was due and unpaid at October 31, 1909, for the five volumes which had been delivered to subscribers, the sum of \$10,462.50, which is included in the Net Worth. There had been paid in advance of the delivery of the remaining fifteen volumes the net sum of \$70,281.25, leaving the net sum of \$156,162.50 to be collected upon

the delivery of the remaining fifteen volumes of the sets already subscribed.

Respectfully submitted,

STANDARD AUDIT COMPANY,

Perley Morse,

Certified Public Accountant,

President.

(Corporate)

(Seal)

Attest: Henry Clark Davis,

Certified Public Accountant,

Secretary.

THE NORTH AMERICAN INDIAN.  
STATEMENT OF NET WORTH AT OCTO-  
BER 31, 1909, AND MEMORANDUM AS  
TO SUBSCRIPTIONS RECEIVED

## RESOURCES:

Field work on unissued books (estimated).....	\$55,000.00	
Paper on hand .....	1,400.00	
Plates on hand .....	17,303.74	
Presswork on hand (estimated) ..	3,500.00	
Books and pictures on hand exclusive of binding (partly estimated) .....	69,910.00	
Binding of bound books and folios on hand (partly estimated) .....	2,940.00	\$150,053.74

Cash in bank .....	669.48	
Unpaid subscriptions .....	10,462.50	
Commissions on subscriptions paid in advance .....	8,541.00	
Expenses paid in advance—not classified...	8,717.61	

TOTAL RESOURCES .....		\$178,444.33
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## LESS:

Accounts Payable .....	\$ 7,687.11	
Bills Payable .....	38,457.46	
Unpaid Commissions .....	3,444.30	
Subscriptions paid in advance .....	74,162.50	123,751.37

NET WORTH .....		\$ 54,692.96
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MEMORANDUM AS TO SUBSCRIPTIONS  
RECEIVED

TOTAL SUBSCRIPTIONS RECEIVED .....	\$308,462.50
Less: Discounts allowed .....	5,175.00

TOTAL NET SUBSCRIPTIONS RECEIVED....	303,287.50
Less: Five Volumes delivered (Net) .....	76,843.75

TOTAL UNFILLED SUBSCRIPTIONS .....	\$226,443.75
Less: Payments in advance of delivery.....	70,281.25

TOTAL UNFILLED SUBSCRIPTIONS NOT PAID IN ADVANCE .....	\$156,162.50
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## Schedule C.

New York, March 30, 1906.

I, Edward S. Curtis, of the City of Seattle, State of Washington, having been engaged in the collection of material for a work to be known as the Curtis Indian Pictures, illustrating the customs, manners and mode of life of the North American Indians, and designed to historically perpetuate in photographs and description a knowledge of that race, and having already collected a large number of photographic plates, negative and positive, and manuscripts notes and data for said work, and being desirous of continuing and completing the same, and it being estimated that the cost of so doing will be Seventy-five thousand dollars (\$75,000.00) to be expended at the rate of Fifteen Thousand dollars (\$15,000.00) per annum for a period of five years, do hereby agree that in consideration of the advancement to me by J. Pierpont Morgan of the said sum from time to time as needed for that purpose, I will deliver to, and store in the safe deposit vaults of the Seattle Safe Deposit Vaults, incorporated, in its safe deposit building No. 701 First Avenue in the City of Seattle, Washington, all the Indian photographic plates, negative and positive, now owned by me in my possession in my studio in the Downs Building, No. 709 Second Avenue, Seattle, Washington, and also all the Indian manuscripts, notes and data heretofore prepared by me in my possession at said place, and that I will in

like manner from time to time deliver to said Seattle Safe Deposit Vaults of such place, manuscripts, notes and data that I may hereafter prepare or obtain for said Curtis Indian Pictures, and that I will deliver the storage warehouse receipts therefor from time to time, and forthwith as the said articles are deposited, to the said J. Pierpont Morgan, with the right, however of access thereto, and of temporarily removing the same or any part thereof for the purpose of preparing said work for publication and for the publication of the same.

Upon the completion and publication of said work, which shall be without cost and expense to, or liability on the part of, the said J. Pierpont Morgan, other than the sum to be advanced as aforesaid, I will deliver to him twenty-five copies of said publication of the Curtis Indian Pictures and text, and also three hundred copies each of the large photographs and two hundred copies each of the small photographs, the same to be accepted and received by him in full satisfaction and discharge for the sums of money so advanced, it being understood that I am, and shall be, under no liability to repay any part of the same except in this way.

Should I be unable to complete the work of collecting the material for said Curtis Indian Pictures, either by reason of death, permanent illness or other unavoidable casualties, than I, or my estate, shall have the right to make publication of the then com-

pleted portion of the work and to deliver to the said J Pierpont Morgan the number above specified of copies of said work and photographs respectively, and Mr. J. Pierpont Morgan is to receive the same in settlement of all the amounts that he may have paid to me up to that time, and no further payments to me or to my estate are to be made by him unless agreeable to Mr. J. Pierpont Morgan. Should any amount paid by Mr. J. Pierpont Morgan and received by me at such time be unexpended by me in connection with this work, then said amount is to be returned to Mr. J. Pierpont Morgan.

Edward S. Curtis.

UNITED STATES DISTRICT COURT,  
WESTERN DISTRICT OF WASHINGTON,  
NORTHERN DIVISION

No. 5225

CLARA J. CURTIS,

Plaintiff in Error,

vs.

THE NORTH AMERICAN INDIAN, INC.,  
E. S. PEGRAM and GUTSON BORGLUM,  
Defendants in Error.

Certificate of Clerk U. S. District Court to Transcript  
of Record.

I, F. M. Harshberger, Clerk of the United States  
District Court for the Western District of Wash-

ington, do hereby certify this printed transcript of record, consisting of pages numbered from 1 to 33, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the supplemental record on return to writ of error herein, from the judgment of said United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges, incurred and paid in my office on behalf of the defendants in error for making supplemental record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to-wit:

Clerk's Fees (Sec. 828, R. S. U. S) for making record, certificate or return 75 folios at 15c .....	\$11 25
Seal to said certificate .....	0 20
Certificate of Clerk to transcript of record, 4 folios at 15c .....	0 60
Statement of cost of printing said transcript....	96-62

I hereby certify that the above cost for preparing

and certifying record and cost of printing amounting to \$108.67, has been paid to me by attorneys for defendants in error.

In Witness Whereof I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 14<sup>th</sup> day of September, A. D., 1921.

F. M. HARSHBERGER,

Clerk United States District Court, Western District  
of Washington.

(Seal)

